IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1172 OF 2002
IN
SUIT NO.1373 OF 2002

Messers Jeena & Company Plaintiff

versus

Nandlal Madhavji Thakkar Defendant

Mr.N.Engineer i/by Desai & Diwanji for plaintiff

None for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th June 2005

PC :

1. The suit is filed by the plaintiff for a declaration that there is a restrictive covenant which runs with the land which is more particularly described in prayer clause (a) of the plaint. The restrictive covenant running with the land as also right of way granted to the defendant by Deed of Grant of Way in terms of indenture of conveyance, ought not, according to the plaintiff, in any manner interfere with their right of way through the access road. The plaintiff claims interim orders in terms of

prayer clause (d) of the plaint. In the Notice of Motion which is taken out, this Court upon hearing the plaintiffs as well as defendant passed an ad-interim order after noticing that the right conferred on the plaintiffs by the indenture in question is not denied. This Court granted ad-interim relief in terms of prayer clause (a) of the Notice of Motion. Prayer clause (a) reads as under :-

"(a) that pending the hearing and final disposal of the Suit, the Defendant, his heirs, executors and administrators by themselves, their servants and agents be restrained by an Order and injunction of this Hon'ble Court from placing any debris, obstruction or hindrance of any nature whatsoever of the said plot No.80 or 79 (balance) or from carrying out any construction activity whatsoever on the said Plot Nos.80 and 79 (balance) situated at Bombay Goa National Highway No.17, Village Kholke, Taluka Panvel, District Raigad, Panchayat Samiti, Panvel and Grup Gram Panchayat, Kholke which would have the effect of obstructing the right of way by access road to the said Survey No.79 (Part) admeasuring 1668 square metres by strip of land passing through the said Survey Nos.82, 81, 80 and 79 (balance) and also further access by strip of land between the Survey No.79 (part) and the neighbouring plot as set out in the indenture of conveyance Exhibit 'A' hereto dated 23rd July, 1998 and the said plan being Exhibit 'B' hereto shaded in red and green therein."

2. This Court noted that the issue of jurisdiction which was sought to be raised, would be considered along with other pleas at the hearing of Notice of Motion.

3. Mr.Engineer appearing for the plaintiffs points that none appears for the defendant despite service of Notice of Motion. An affidavit proving service of the Notice of Motion is already on record. In fact the defendants were represented by an advocate at the ad-interim stage. However, thereafter no steps have been taken either to get the ad-interim order vacated or to file a detailed reply dealing with the averments in the plaint and the Notice of Motion. Consequently, the ad-interim order granted by this Court is confirmed. The same shall continue till hearing and final disposal of the suit. However, it is clarified that this order shall not preclude the defendant from raising the issue of jurisdiction of this Court and from this Court deciding the same in accordance with law.

4. After the above order was passed it is brought to my notice that there is an affidavit in reply filed at the ad-interim stage. However, despite filing such reply, none has appeared for the defendants. Mr.Engineer informs me that this matter had appeared on earlier occasions and that at that time also none had appeared for the defendants.

(S.C.DHARMADHIKARI, J.)